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UNITED STATES OF AMERICA  
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14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,	)	CR No. CR 12-559-DMG
	)	
17 Plaintiff,	)	<u>UNITED STATES' SENTENCING</u>
	)	<u>POSITION FOR DEFENDANT AAA CASH</u>
18 v.	)	<u>ADVANCE, INC.</u>
	)	
19 AAA CASH ADVANCE, INC.	)	Sentencing: October 15, 2012 at
	)	10:00 a.m.
20 Defendant.	)	
	)	
21	)	
	)	
22	)	
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23	)	
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24	)	

25 Plaintiff United States of America, by and through its  
26 attorneys of record, Trial Attorney Matthew Klecka and AUSA David  
27 L. Kirman, hereby submits its position regarding sentencing for  
28 defendant AAA Cash Advance, Inc. The government's sentencing

1 position is based upon the attached memorandum of points and  
2 authorities, the files and records in this case, and any other  
3 evidence or argument that the Court may wish to consider at the  
4 time of sentencing.

5 Date: October 1, 2012

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.     Introduction**

3           Defendant AAA Cash Advance, Inc. ("defendant") was a check  
4   cashing store which willfully failed to maintain an effective  
5   anti-money laundering policy ("AML Policy"). As part of its  
6   failure, defendant failed to file currency transaction reports  
7   ("CTRs") and failed to check its customers' identification. In  
8   failing to maintain an effective AML Policy, defendant  
9   facilitated money laundering by allowing its customers to engage  
10   in currency transactions without any oversight from law  
11   enforcement or regulators.

12          On September 12, 2012, defendant pled guilty to count 9 of  
13   the indictment which alleged a willful failure to maintain an  
14   effective anti-money laundering program, in violation of 31  
15   U.S.C. §§ 5318(h), 5322 and 18 U.S.C. § 2. The plea was pursuant  
16   to a plea agreement. Both defendant and the United States agreed  
17   to sentencing without a presentence report ("PSR").

18          For the purposes of sentencing, the United States  
19   respectfully requests that the Court adopt the following portions  
20   of the plea agreement: the factual basis, sentencing guidelines,  
21   and joint recommendation regarding a \$6,000 fine, \$3,012 in  
22   disgorgement, and a \$400 special assessment. The government also  
23   requests that the Court impose the statutory-maximum period of  
24   probation of five years.

1 **II. Facts<sup>1</sup>**

2 Throughout the time period at issue, defendant was a check  
3 cashing store located at 1771 West Jefferson Boulevard, Los  
4 Angeles, California. As a check cashing store, defendant was a  
5 money service business and financial institution within the  
6 meaning of the Bank Secrecy Act ("BSA"). Defendant was engaged  
7 in the business of, among other things, cashing checks for other  
8 people for currency. Defendant typically charged a fee for this  
9 service.

10 Defendant was aware that the BSA required financial  
11 institutions like AAA Cash Advance to file a "Currency  
12 Transaction Report" ("CTR") with the Department of Treasury, for  
13 any transaction involving more than \$10,000 in currency on a  
14 single day. For the purposes of filing a CTR, defendant knew  
15 that the BSA required defendant to aggregate multiple currency  
16 transactions and treat them as a single transaction if the  
17 multiple transactions were by or on behalf of one person and  
18 resulted in either cash-in or cash-out totaling more than \$10,000  
19 during any one business day.

20 In addition, defendant was aware that the BSA required  
21 defendant to develop, implement, and maintain an effective  
22 anti-money laundering program reasonably designed to prevent  
23 defendant from being used to facilitate money laundering.  
24 Defendant also knew that the program was required to have written  
25 policies, procedures and controls governing the verification of  
26 customer identification, the filing of reports such as CTRs, the

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27  
28 <sup>1</sup> Defendant admitted to these facts in the plea agreement  
and at the change of plea.

1 creation and retention of records, response to law enforcement  
2 requests, and other compliance with BSA requirements, and that  
3 defendant was required to have a compliance officer, who was  
4 responsible for assuring that the business complied with all BSA  
5 requirements.

6 Beginning in or around August 2010, and continuing through  
7 in or around February 2012, defendant, through its agent,  
8 repeatedly cashed bundles of checks totaling over \$10,000 in one  
9 business day, knowing that the multiple transactions were by and  
10 on behalf of one person, without filing a CTR. The checks were  
11 presented to defendant by an individual who presented himself as  
12 the owner of a health care business and a medical practice on  
13 whose accounts the checks were drawn. Defendant, through its  
14 agent, had knowledge that the payees' names on the checks were  
15 not the individuals actually receiving the cash. Defendant did  
16 not require that the individual presenting the checks provide any  
17 identification or any identification documents regarding either  
18 the payors or payees named on the checks the individual  
19 presented. Additionally, defendant, through its agent,  
20 instructed the individual to write multiple checks for amounts  
21 less than \$10,000, but in the aggregate, totaling more than  
22 \$10,000 to facilitate the avoidance of AAA Cash Advance's CTR  
23 reporting requirement. In exchange for this service, defendant  
24 charged a fee of 3%. On August 12, 2010, September 2, 2010,  
25 October 8, 2010, December 13, 2010, February 5, 2011, November 9,  
26 2011, February 2, 2012, and February 13, 2012, defendant  
27 improperly failed to file CTRs on \$100,420 worth of checks that  
28

1 required CTRs. Defendant received approximately \$3,012 (3%) in  
2 check cashing fees from its violations.

3 Defendant accepted the individual's bundled checks and  
4 deposited the checks into its bank accounts and in bank accounts  
5 of other check cashing stores. Several days later, defendant  
6 returned currency in excess of \$10,000 to the individual. At no  
7 time during this period did defendant file a CTR to document the  
8 transactions in currency in amounts greater than \$10,000 with the  
9 customer on a single day.

10 Defendant was responsible for implementing an effective  
11 anti-money laundering program. Defendant knew that the BSA  
12 required it to develop, implement, and maintain an effective  
13 anti-money laundering program reasonably designed to prevent  
14 defendant from being used to facilitate money laundering.  
15 Defendant knew that the program was required to have, among other  
16 things, procedures and controls governing the verification of  
17 customer identification, the filing of reports such as CTRs, the  
18 creation and retention of records, response to law enforcement  
19 requests, and other compliance with BSA requirements. Despite  
20 this knowledge, the defendant failed to have such a program and  
21 further failed to (a) obtain identification from certain  
22 customers; and (b) file CTRs when they were required.

### 23 **III. PENALTIES AND SENTENCING GUIDELINES**

24 For this defendant, the statutory maximum sentence that the  
25 Court can impose for a violation of 31 U.S.C. §§ 5318(h), 5322  
26 is: five years probation; a fine of \$500,000 or twice the gross  
27 gain or gross loss resulting from the offense, whichever is  
28 greatest per 18 U.S.C. § 3571; and a mandatory special assessment

of \$400 per 18 U.S.C. § 3013(a)(2)(B). The Court may also order disgorgement pursuant to U.S.S.G § 8C2.9.

The parties have stipulated to the following sentencing guidelines which are applicable to a violation of §§ 5318(h), 5322:

Base Offense Level : 8 U.S.S.G. § 2S1.3(a)(1)

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**Total Offense Level : 8**

Base fine: 8 U.S.S.G § 8C2.4(d) - \$10,000

Base culpability: 5 U.S.S.G § 8C2.5(a)

Culpability  
reduction for acceptance  
of responsibility: -1 U.S.S.G § 8C2.5(g)(3)

Multiplier: .08-1.6 U.S.S.G § 8C2.6

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**Total Fine Range : \$ 6,000 - 16,000**

The parties have also stipulated that pursuant to U.S.S.G § 8C2.9 that defendant should disgorge the fees it collected based on the transactions in the indictment. Of the \$100,420 worth of checks cashed with defendant by the individual that required CTRs, defendant received approximately \$3,012 (3%) in check cashing fees. Therefore, the Court should order \$3,012 in disgorgement.

The government also requests that the Court impose the statutory-maximum term of probation of five years.<sup>2</sup>

#### **IV. SECTION 3553(a) FACTORS**

The government believes that a sentence of five years probation, a fine of \$6,000, disgorgement of \$3,012, and a \$400

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<sup>2</sup> Defendant has notified the government it concurs in the recommendation of a five-year period of probation. If, after defendant pays its monetary penalties, dissolves and surrenders its license prior to the termination of its probation, the parties will file a stipulation for early termination of probation.

1 special assessment is reasonable in light of the sentencing  
2 factors the Court must consider under 18 U.S.C. § 3553(a). There  
3 are a number of factors that counsel in favor of the government's  
4 recommended sentence. The failure to maintain an effective AML  
5 policy is a serious offense. Such policies are important because  
6 they include reporting requirements which assist law enforcement  
7 in ferreting out criminal activity. California Bankers Ass'n v.  
8 Shultz, 416 U.S. 21, 38 (1974).

9 In mitigation, the defendant's criminal conduct appears  
10 attributable to one employee, Diana Brigitt. Moreover, after it  
11 was charged, defendant shut down its business and accepted full  
12 responsibility for its conduct. Defendant also intends to  
13 dissolve the corporation following payment of the penalties in  
14 this matter and will likely lose its license to cash checks in  
15 any event. In its plea agreement, defendant has also stipulated  
16 to monetary penalties and has stated it will pay them in full  
17 within 30 days of the Court's judgement. Therefore, the  
18 government's recommended sentence will protect the public from  
19 further crimes of defendant. The criminal conviction, statutory-  
20 maximum term of probation, and other penalties are also  
21 sufficient to deter other check cashers from similar criminal  
22 conduct and to encourage them to maintain effective AML policies.

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1 **IV. CONCLUSION**

2 The government respectfully requests that the Court sentence  
3 defendant to: a five-year period of probation; a \$6,000 fine;  
4 disgorgement of \$3,012; and a \$400 special assessment.

5 Date: October 1, 2012

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